BlackRock

August 12, 2020

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Submitted via electronic filing: http://www.sec.gov/rules/sro.shtml

Re: Notice of Filing of Proposed Rule Change to Adopt a New "Early Market On Close" Order Type; File No. SR-NASDAQ-2020-037

BlackRock, Inc. (together with its affiliates, "**BlackRock**")[1] appreciates the opportunity to comment on the above referenced Nasdaq rule filing. As proposed, Nasdaq would introduce an "Early Market On Close" ("EMOC") order type which would enable market participants to obtain a matched execution at the Nasdaq Closing Cross price at an earlier time than the close – specifically 3:35pm. Un-matched EMOC orders would be converted into regular Market On Close ("MOC") orders for participation in the Nasdaq Closing Cross.

BlackRock supports rule changes which promote fair and orderly markets and benefit the functioning of the entire equity market ecosystem, inclusive of both individual stocks and ETFs. However, we believe that EMOC orders would provide scant benefit to investors while introducing undue complexity to the closing auction. Therefore, we urge the Commission to disapprove this proposal.

Nasdaq believes that EMOC orders are designed in the interest of investors. Yet, they provide no evidence of investor demand or the particular benefit that such orders would deliver. The only discernable advantage is an earlier pair-off for EMOC orders, but BlackRock believes that the value which investors would derive from this is dubious at best.

The proposal claims that the introduction of an EMOC order type would promote just and equitable principles of trade by providing a competitive alternative to the Cboe Market Close ("CMC") order type.[2] Yet, Nasdaq previously noted that the CMC would spawn "similar mechanisms" which "would add complexity and systemic risk

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1 BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed-income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals around the world.

2 See Notice of Filing of Proposed Rule Change to Adopt a New "Early Market On Close" Order Type, SEC Release No. 34-89334, (Jul. 16, 2020) available at https://www.sec.gov/rules/sro/nasdaq/2020/34-89334.pdf.

at a critical time of the trading day."[3] The EMOC order type is one such similar mechanism. Additionally, the CMC was originally intended to "provide a competitive alternative to sending orders to the primary listing market's closing auction."[4] As such, by the transitive property, Nasdaq's EMOC inexplicably competes with MOC orders in its own Closing Cross.

This conflict is most apparent in the relative priority of these two order types:

> If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC, IO and Close Eligible Interest would be executed, then Orders will be executed at the Nasdaq Closing Cross price, with previously matched EMOCs executing first in priority, and then the remaining Orders executing pursuant to the existing priority set forth in Rule 4754(b)(3) (as renumbered, (b)(4)).[5]

Although such conditions occur infrequently, this difference in priority results in some paradoxical execution outcomes that are unfairly discriminatory to MOC orders. For instance, an EMOC order submitted at 3:30 pm would have priority over an MOC order entered at 10:00 am. Accordingly, market participants may be disproportionately compelled to submit EMOC orders instead of MOC orders to achieve greater certainty of execution, resulting in earlier auction order submission. An unintended consequence of this change may be the distortion of Nasdaq's "carefully considered deadlines for entering and cancelling certain order types to limit behaviors and strategies that could be used to undermine the process or outcome of the Closing Cross."[6]

If Nasdaq believes that earlier submission of MOC orders is beneficial, they should consider adopting a fee schedule that provides price incentives to MOC orders according to time of order entry or modification. Similar pricing models already exist for d-Quote orders on the New York Stock Exchange.[7] Earlier order submissions could be encouraged through lower fees without introducing new order types and additional market complexity.

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We thank the Commission for the opportunity to voice our concerns regarding the Nasdaq EMOC order type. BlackRock opposes this proposal in order to protect

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3 Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc. (Jun. 12, 2017) available at https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-1797187-153614.pdf.

4 See Notice of Filing of a Proposed Rule Change to Introduce Bats Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28, SEC Release No. 34-80683, (May 16, 2017) available at https://www.sec.gov/rules/sro/batsbzx/2017/34-80683.pdf.

5 See *supra* note 2.

6 See *supra* note 3.

7 See Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List, SEC Release No. 34-82965, (Mar. 29, 2018) available at https://www.sec.gov/rules/sro/nyse/2018/34-82965.pdf.

investors and maintain fair and orderly markets. We welcome any questions or further discussion on our views.

Sincerely,

Hubert De Jesus
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